

Message Text

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13

ACTION L-03

INFO OCT-01 EUR-25 EA-11 ISO-00 PM-07 CIAE-00 INR-10

NSAE-00 RSC-01 DODE-00 DRC-01 /059 W

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R 161015Z MAR 74

FM AMEMBASSY LONDON

TO SECSTATE WASHDC 8772

INFO AMCONSUL HONG KONG

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E.O. 11652: N/A

TAGS: MARR, UK, HK

SUBJECT: DAMAGE TO HONG KONG PIER BY USN VESSEL

REF: STATE 170132, AUGUST 28, 1973

1. WE CONVEYED THE INFORMATION CONTAINED IN REFTEL TO FCO ORALLY IN SEPTEMBER AND FORMALLY IN A LETTER OF OCTOBER 15, 1973. WE HAVE NOW HAD A RESPONSE FROM FCO WHICH DISAGREES WITH THE VIEWS EXPRESSED IN OUR LETTER.

2. FCO NOTES US HAS HELD THAT 1942 WAIVER AGREEMENT MIGHT BE APPLICABLE TO HONG KONG BECAUSE OF THE "UNLESS A DIFFERENT INTENTION APPEARS FROM THE TREATY OR IS OTHERWISE ESTABLISHED" CLAUSE IN ARTICLE 29 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES. FCO STATES, HOWEVER, THAT "IT IS CLEAR FROM OUR FILES AT THE TIME THAT THE BRITISH GOVERNMENT DID NOT INTEND THAT AGREEMENT TO APPLY TO DEPENDENT TERRITORIES, AND THERE IS AMPLE EVIDENCE THAT THIS HAS BEEN ACCEPTED BY THE UNITED STATES". THE FCO CITES THE FOLLOWING THREE EXAMPLES IN SUPPORT OF THIS STATEMENT:

(A) ON PAGES 11, 12 AND 13 OF THE MEMORANDUM RELATING TO INTERPRETATION AND IMPLEMENTATION OF THE AGREEMENT THERE ARE VERY DETAILED PROVISIONS REGARDING WAIVER PROCEDURES IN ENGLAND AND THE UNITED STATES.

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THERE ARE NO SUCH PROVISIONS REGARDING PROCEDURES IN

THE DEPENDENT TERRITORIES, ALL OF WHICH HAVE THEIR OWN
LEGAL SYSTEMS AND TO WHICH THE PROCEDURES IN THESE
PARAGRAPHS WOULD BE WHOLLY INAPPROPRIATE;

(B) ON MARCH 27, 1943, THE BRITISH FOREIGN OFFICE
RECEIVED A TELEGRAM FROM ITS EMBASSY IN WASHINGTON WHICH
STATED, "SHEA ASKS YOU IF YOU HAVE BEEN ABLE TO DO
ANYTHING ABOUT EXTENSION OF KNOCK-FOR-KNOCK TO COLONIES
AND HOPES THAT THIS WILL BE ON A LEND-LEASE AND NOT ON
A CURRENT ACCOUNTING BASIS".

(C) A LETTER FROM THE MINISTER-COUNSELOR OF THE
UNITED STATES TO THE FOREIGN SECRETARY DATED JUNE 28,
1943 SPEAKS OF THE EXTENSION OF THE WAIVER AGREEMENT
TO INDIA, SUGGESTING THAT THE U.S. UNDERSTOOD THAT
COLONIES WERE NOT INCLUDED IN THE MAIN AGREEMENT.
(COPY BEING POUCHED.)

3. IN VIEW OF THE ABOVE, FCO SAYS THAT THE PRESENT
HMG POSITION IS THAT 1942 WAIVER AGREEMENT DOES NOT
APPLY TO HONG KONG AND THAT THE WAIVER CERTIFICATE
ISSUED BY THE TREASURY SOLICITOR WAS ACTION TAKEN "IN
EXCESS OF HIS POWERS".

4. FCO RECOGNIZES THAT THIS ISSUE IS A LONG-STANDING
ONE WITH LONG DELAYS IN CONSIDERATION BY BOTH SIDES
BUT HMG IS NOW PRESSING FOR QUICK RESOLUTION. EMBASSY
THEREFORE REQUESTS TELEGRAPHIC REPLY AS SOON AS
POSSIBLE.

SOHM

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